

MUNOFS VI RESEARCH REPORT

Forum: The Disarmament Committee

Issue: Improving the Treaty on Global Conventional Arms Trade

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INTRODUCTION

Since the early 1990s Amnesty International has been calling for a treaty to ensure that states stop allowing transfers of military and policing equipment where it is likely those arms will be used for serious human rights abuses. In 2003 Amnesty International launched an international campaigning with civil society for a global Arms Trade Treaty to set rules for the strict regulation of the international transfers of conventional arms. With the passing of General Assembly Resolution A/RES/61/89 on the 18th of December 2006 entitled 'towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms,' the United Nations also reaffirmed the need of an internationally recognized and universally accepted Arms Trade Treaty (ATT).

In subsequent years, the Arms Trade Treaty would remain the main focus of debate for the First Committee of the General Assembly (The Disarmament and International Security Committee or DISEC), and would see many resolutions pertaining to the issue passed such as those of A/RES/64/48 (2009) and A/C.1/55/L.50 (2011). Ultimately, this culminated in the landmark Arms Trade Treaty, officially adopted by the General Assembly on 2 April 2013, after a voting process where only 3 nations voted against it.

Since then, 83 nations have pledged to be signatories of the Treaty, while 4 nations have ratified it. Ratifying this treaty is symbolic of a nation's willingness to take action through adhering to the provisions of the treaty. However, only 4 nations have done this, and none of them are Permanent 5 members of the Security Council. This Treaty will only become binding once a minimum of 50 states have ratified it in their own nations.

THE NEED FOR AN ARMS TREATY

Every day, millions of people suffer from the direct and indirect consequences of the irresponsible arms trade: thousands are killed, others are injured, many are raped, and/or forced to flee from their homes, while many others have to live under constant threat of harm caused by the usage of such weaponry.

The poorly regulated global trade in conventional arms and ammunition fuels conflict,

poverty and human rights abuses, particularly in the Sub-Saharan region. The problems are compounded by the increasing globalization of the arms trade – components being sourced from across the world, and production and assembly in different countries, sometimes with little controls. Domestic regulation of the arms trade has failed to adapt to these changes.

While existing national and regional controls are important, these are not enough to stop irresponsible transfers of arms and ammunition between countries. Hence, a treaty, a global framework, is required to regulate the trading of such materials, and to uphold international security as a whole.

An effective ATT would be based on a simple principle: absolutely no transfers of weapons likely to be used for violations of international law. It would establish common binding standards that must be applied to assess international weapons transfers. These standards would be based on existing international law including international human rights and humanitarian law. In practice, this should mean that a transfer of weapons will be stopped if there is evidence that the weapons are likely to be used for grave violations of international human rights, humanitarian law, or will adversely affect sustainable development.

KEY TERMS

Ratification: In the context of this topic, ratification refers to the action by which a nation's instrument of ratification (accession, acceptance, or approval) is used to enshrine the principles and provisions of the Arms Trade Treaty within the state. This legally binds the nation in question to adhere to the responsibilities and stipulations therein.

Entry into Force: The Arms Trade Treaty enters into force 90 days after 50 States have deposited their instrument of ratification (acceptance, or approval). What this means is that the Arms Trade Treaty becomes legally binding for all the nations that have ratified, hence the stipulations within are integrated into the legislature of the nation. Failure of a nation that has ratified the Treaty to adhere to such rules will place the state under scrutiny by the United Nations and further action may be taken if deemed necessary.

Human Rights: Human rights are "commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being."^[1] Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone). The importance of protecting these rights has been enshrined in instruments such as that of the UN Declaration of Human Rights.

Conventional Arms: The terms conventional weapons or conventional arms generally refer to weapons that are in relatively wide use that are not weapons of mass destruction (e.g.

nuclear, chemical, and biological weaponry). Conventional weapons include small arms and light weapons, sea and land mines, as well as (non-nuclear) bombs, shells, rockets, missiles and cluster munitions.

Terrorism: Defined to be 'the combined use and threat of violence that is directed against one set of targets (the direct victims) in order to coerce compliance or to compel allegiance from a second set of targets (targets of demands) and to intimidate or impress a wider audience (target of terror or target of attention).' The bearing of terrorism on this topic is that the indiscriminate trade and transfer of arms between parties often facilitate war crimes, unlawful killings and other serious human rights abuses, often perpetrated by terrorist organizations and in certain occasions, governmental authorities.

International Law: The laws on which the international framework for the practice of stable and organized international relations is built. International law differs from national legal systems in that it primarily concerns nations rather than private citizens. National law may become international law when treaties delegate national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court.

Globalization: Globalization is a way of describing the spread and dissemination of production, communication and technologies across the world. Literature has defined it as a situation in which countries are becoming increasingly integrated, connected and interdependent with regard to matters such as trade and crisis management. Globalization impacts the global conventional arms trade in the sense that countries can no longer attempt to solve the problem unilaterally - hence the establishment of the ATT.

TIMELINE

1997 – Nobel Peace Laureates, supported by NGOs call for a Code of Conduct on international arms transfers.

2000 - NGOs, with the help of international legal experts, develop the first draft “Framework Convention on International Arms Transfers” which later forms the basis of the “Global Principles for Arms Transfers.”

2003 – The Control Arms campaign, calling for a global Arms Trade Treaty (ATT), is launched in over 70 countries around the world. An Arms Trade Treaty is initially supported by three states: Cambodia, Costa Rica and Mali.

June 2006 – After three years of campaigning, the Million Faces petition, including photos of one million people around the world demanding an Arms Trade Treaty, is handed over to United Nations (UN) Secretary-General Kofi Annan.

October 2006 – Seven states co-author a General Assembly resolution to begin work on an Arms Trade Treaty at the UN.

December 2006 – An overwhelming majority of UN Member States (153) vote for a UN process towards the establishment of an ATT. The United States of America votes against the process.

2007 – The UN Secretary-General consults states on the ‘feasibility, scope and draft parameters of an Arms Trade Treaty.’ It is the most successful exercise of its kind within the UN, as 101 states submit their views. The majority of states call for a comprehensive treaty based on international human rights law and international humanitarian law (IHL).

2008 – The Group of Governmental Experts (GGE) established by the UN Secretary-General meets three times. The GGE agrees that UN Charter principles must be central to an ATT and that work on an ATT should continue within the UN.

December 2008 – The UN General Assembly establishes an Open-Ended Working Group (OEWG) for all UN Member States to further consider aspects of an eventual ATT, and that work should continue on an ATT within the UN.

2009 – The US Government reverses its former opposition and begins to support the Arms Trade Treaty and the UN General Assembly is able to agree a timeframe for formal negotiations. The agreement includes four preparatory meetings between 2010 and 2012, and a final negotiating conference in July 2012.

2010–2012 – Control Arms campaigners including Oxfam Australia’s Ben Murphy and Pacific peace activities like Ema Tagicakibau make several trips to New York to attend the treaty negotiations and make sure the concerns of people affected by armed violence are heard.

2012 – At the beginning of the ‘final’ negotiating conference Control Arms campaigners present UN Secretary General Ban Ki-Moon with a petition of over 500,000 voices calling on all world governments to secure a strong treaty. Governments develop a draft treaty at the conference but fail to adopt it after the United States, followed by Russia and others request more time for negotiations.

March 2013 – The final negotiating conference, now presided over by Australian diplomat Peter Woolcott, begins in New York. Strong improvements are made to the treaty text and on the penultimate day it seems the overwhelming majority of world governments support it. However, in the final hours, a consensus outcome is blocked by just 3 countries – Iran, Syria and North Korea. A group of 12 countries including Australia immediately respond with a proposal to take the draft Treaty text, attached to a new resolution, to the UN General Assembly for passage via a two-thirds majority vote.

2 April, 2013 – more than 90 countries co-sponsor a new resolution in the UN General Assembly to adopt the Arms Trade Treaty. The resolution passes – 155 in favour, 22 abstentions and only 3 countries opposed – Iran, Syria and North Korea.

June 3, 2013 – The Arms Trade Treaty will be opened for signature by all UN member states.

KEY PARTIES AND STAKEHOLDERS INVOLVED

The People's Republic of China: China abstained during the voting process on the resolution for the Arms Trade Treaty, and has not signed the document. While not going so far such as nations like Iran and North Korea to vote against the document, the fact remains that China was unwilling to adopt such a treaty and still not done so. While the reasons for such a stance have been studiously avoided during negotiations and discussions, nations must bear in mind China's considerable global influence upon the international weapons market, and her current state as one of the world's 'most irresponsible arms importers and exporters' before making any hasty judgements on her position.

The United States of America: The USA, in its position as the world's largest arms producer and exporter, was a key factor to the adoption of the resolution on 2 April 2013. While initially opposed to such a treaty, a turnaround in their position generated much support for the cause.

"Amnesty International commends the US government commitment to sign the Arms Trade Treaty in the very near future and thus avoid any action that would undermine the treaty. We will continue pushing leaders in the USA and elsewhere in the world to ratify and implement the treaty as soon as possible in order to ensure that arms transfers no longer fuel atrocities and abuse," said Frank Jannuzi, Deputy Executive Director of Amnesty International USA.

A group of US Senators – emboldened by the country's powerful gun lobby – have shown resistance to future US ratification of the ATT. But Amnesty International has argued that their concerns are rooted in baseless assertions about the treaty's reach into domestic gun control regulations, whereby the internal legislation of a nation remains untouched by the treaty. No matter what the situation is, the fact remains that the position of the USA has a significant bearing on any amendments or proposals to improve such a treaty. Whether or not the USA's stance on the matter will become hypocritical in the future remains to be seen.

Amnesty International: Amnesty International is a non-governmental organisation focused on human rights with over 3 million members and supporters around the world. The objective of the organisation is "to conduct research and generate action to prevent, and end, grave abuses of human rights, and to demand justice for those whose rights have been violated."

Along with Oxfam and the International Action Network on Small Arms (IANSA), it established the Control Arms Campaign in 2003 for the purposes of building support for the ATT amongst governments.

The Islamic Republic of Iran: As one of the three nations that established a blockade against the Arms Trade Treaty, Iran has been cast into the spotlight on their actions. Speaking in the UN General Assembly, Iran's Deputy Permanent Representative at the UN Gholam-Hossein Dehqani emphasized that while the major objective of the ATT was to regulate global arms trade, the final draft still provides for the transfer of weapons to armed forces deployed outside their own countries. He went on to say that the new treaty grants every right to major arms exporters while ignoring the right to purchase arms by countries in need of weapons for defending their territorial sovereignty. The Iranian envoy also pointed to the treaty's indifference toward the demand of many nations to prohibit the transfer of arms to countries engaged in military aggression against other nations. From Iran's point of view, the Treaty is primarily motivated by the apparent goal of United States and Israel to 'assert their dominance in the Middle East.' This has been emphasized by how the treaty makes no provision for restriction of the arms trade to nations currently engaged in military aggression toward other nations, causing concerns over whether the United States has been using the ATT to, once again, use their position as their world superpower to dominate the United Nations. However Iran, currently under a UN arms embargo, has legitimate concern over the how this treaty may prevent or further undermine their government's ability to control an already destabilized and shaken country.

The Disarmament and International Security Committee: As the committee of the United Nations that passed the original resolution, the onus is now upon the DISEC to further improve upon the treaty by the many issues that countries have with it, as well as going a step further to ensure the treaty can be universally accepted and ratified. With all 193 members of the United Nations given a seat within this committee, the DISEC can take into account the views of all nations, and hopefully take action after careful consideration of such views that will prove to be effective in the long run.

UN INVOLVEMENT

- The Arms Trade Treaty (2013) — A/RES/67/234 B
- The Arms Trade Treaty (2012) — A/RES/67/234 A
- The Arms Trade Treaty (2011) — A/C.1/66/L.50
- The Arms Trade Treaty (2009) — A/RES/64/48
- Towards an Arms Trade Treaty (2008) — A/RES/63/240
- Towards an Arms Trade Treaty (2006) — A/RES/61/89

These General Assembly Resolutions were crucial and laying out the groundwork for the Arms Trade Treaty. Since 2006, the DISEC has been discussing the many aspects that

have a bearing on the fate of such a treaty, and ultimately this would lead to the passing of resolution 57/234 with a vote of 154-3-23 to create the Arms Trade Treaty of 2013.

SCOPE OF DEBATE

Criteria for Ratification: The ability of a nation to uphold the principles and carry out the duties laid out for nations within it oftentimes prevents a willing nation from signing or ratifying the document. In the case of India, the Indian government has unilaterally tried, in the past, to establish certain guidelines to prevent indiscriminate and illegal trading of conventional arms. However, such an attempt was largely unsuccessful for a number of reasons. The binding nature of ratification means that a nation who has chosen to do so must carry out the responsibilities that doing so entails. However, it is apparent that many nations do not have the resource of capabilities to do so, and hence cannot ratify this document even if they have a willingness to do so. This has a great impact on the future of the treaty, as the treaty only has binding power once there are 50 states that have ratified it, and is there is nothing that will compel nations to move toward the ultimate goal of reducing widespread abuse of human rights, through the restriction of conventional arms trade, until that quota is reached.

Article 4 of the Existing Treaty: This article, pertaining to the assessment by nations regarding the possible impacts of trading weapons to a certain party, has been discussed at length in both the United Nations GA and in internal forums. Neither “international humanitarian law” (IHL, traditionally known as the laws of war) nor “international human rights law” (IHRL) has a clear meaning that is fully shared by all likely treaty signatories.

In theory, this problem might be remedied by drafting more precise criteria to use in the national assessment of a proposed arms export, but in practice U.N. member states will likely disagree on precise criteria or what would constitute a “serious violation” of such criteria. The only way to secure a treaty is to base it on criteria that are fuzzy enough to secure general assent. Regrettably, that lack of clarity will work against the U.S. because the U.S. will be held by other signatories—and NGOs—to have agreed to a set of evolving norms that it is not solely responsible for defining. This is in essence a problem inherent in any form of ATT, not just in this one. The IHRL criterion is open to an additional objection that does not apply to the criterion based on IHL. The U.S. sometimes decides to sell arms to states that are not fully democratic and that do not fully respect human rights: Saudi Arabia is one obvious example. The U.S. sells arms to Saudi Arabia because it is a bulwark against the expansion of Iranian influence and because Iran is “oppressive, anti-American, aggressive, and dangerous.”

By the same token, the U.S. supported South Korea for many years when it was not fully democratic because it was much better than North Korea. The world rarely offers a choice between clearly good and clearly bad options, but only between the alternatives of not great and worse. A treaty that obliges the U.S. to sell only to buyers who are extremely unlikely to

violate international human rights law—however defined—would prevent it from making the most elementary and necessary choices. For this reason alone, this is an unwise and naïve criterion. The State Department acknowledged this problem in June 2010 when it stated that in certain regions, including the Middle East, it would be difficult to create criteria “that can be applied without exception and fit U.S. national security interests.” That is a polite way of admitting that criteria that would prevent the U.S. from selling arms to Saudi Arabia and other countries would not be in the interests of the U.S.

Equal Treatment of Democracies and Dictatorships: Any treaty negotiated through the U.N. will treat democracies and dictatorships equally. As stated in paragraph 7 of the treaty’s principles, any ATT will recognize that all signatories have the inherent right as sovereign states to “acquire conventional weapons for legitimate self-defense...and to produce, export, import and transfer conventional arms.” These rights properly pertain only to law-governed democracies. In practice, today, dictatorships also have them. The treaty, like any nearly universal treaty that includes dictatorships and democracies on equal terms, will take that practical reality and enshrine it as a principle established by treaty, thus making it harder to move toward a world in which dictatorships do not have the privileges that rightly pertain to sovereign democracies.

Refusal to Understand the Failings of Security Council Arms Embargoes: An ATT is regularly demanded on the grounds that existing U.N. Security Council arms embargoes are routinely violated. But whereas the embargoes are narrow in scope and geographical application, the ATT intends to cover the conventional trade in arms across the entire globe. Paradoxically, the ATT is supposed to work where the embargoes have failed.

Security Council embargoes fail because nations chose not to respect them or are too ill-governed to enforce them. Even U.N. peacekeepers themselves have been credibly accused of violating U.N. embargoes by the BBC. The vastly broader and wide-scoped ATT will not change that reality. It reflects a belief that the way to change the world is to smother it with law, an approach that impinges more heavily on the law-abiding than the lawless.

Blaming Exporters, Not Importers: The ATT places the majority of its obligations on arms exporters, instead of importers. This is in line with the tendency of both the U.N. and uncritical believers in arms control to blame problems on weapons, not on those who use them. Yet it is the importers of the arms, not the exporters or the arms themselves, that are actually responsible for arming terrorists or committing human rights violations with the arms in question. The ATT assumes by its very nature that all signatories are responsible actors, but if they were, the treaty would be unnecessary. It reflects a worldview that blames problems not on the world’s autocracies and ill-governed states, but on the better-governed places that paradoxically are primarily responsible for negotiating the treaty.

Lack of Support for Resistance Against Tyranny: The essence of the ATT is that it should lead to the creation of a national import and export control system, specifically for

conventional arms and weaponry. However, it does not take into account the usage of weaponry to combat tyranny, particularly in the case of the Arab Spring. This may be used by the leaders of rogue or failed states to further increase the suffering of their people - something the United Nations has pledged to prevent.

POSSIBLE SOLUTIONS

Bearing in mind the flaws inherent within this ATT, and with any document with such a scope, delegates should be constructive and focus on improving the present treaty, instead of attempting to de-legitimize it as a whole. As such, several key solutions can be implemented to better facilitate the usage of a more comprehensive and well-rounded document, that will ultimately benefit the global community as a whole. Amendments to the present treaty should be proposed, with their scopes addressing the following needs.

The need for an international mechanism with the power to supervise implementation of the ATT's provisions. The Special Committee, in 1934, outlined the need for “a powerful international supervisory body, the *Permanent Disarmament Commission*.” It was envisaged that the Commission would help verify the limitations and reduction of national arms holdings, as well as monitor the international trade. What seemed obvious at that time was that an international agreement could not be enforced by simply leaving the task and its policing to the states themselves. Attempts by Amnesty International and other Nobel Peace Laureates to float proposals for an international verification mechanism for the treaty were not successful. A fair portion of the proposed ATT's provisions are already in force at regional or state levels but are sometimes either violated by the very authorities in charge of their implementation or else ignored when special interests or supposed national security issues are involved. A *Permanent Disarmament Commission* could function as an inspection agency, as in other international treaties, and could have the power to propose sanctions on states found ignoring their treaty obligations.

The need to fully include in the treaty's scope “munitions”, “ammunition”, “spare parts and components”, and “military technology.” A rifle without ammunition is a high tech club. Common sense dictates that munitions and ammunition be included in the ATT for it to be effective, as has long been demanded by NGO proponents. Currently, states regulate the international trade of, say, iron, wood, or plastic, but according to several states (including the U.S.) it is too sensitive and difficult to fully regulate and report on the international trade in ammunition under the ATT. Yet the U.S. has *national* regulations on the import and export of ammunition. Similarly, some states argue for the need to exclude from the ATT spare parts and components or technology—the systems that enable production and basic functioning of conventional arms.

The need to broaden the Scope of the ATT. Excluded in the present ATT and previous drafts, as pointed out by NGO proponents, are certain categories of equipment and

technologies such as military vehicles, transport aircraft, military training aircraft, robots, drones, optical and electronic devices used in the coordination of combat fields or combat theaters, dual-use items used in cyber wars, and equipment used by security forces. Exclusion of these from a future ATT means willfully turning a blind-eye to the reality of armed violence and warfare: armed drones are currently used for extra-judicial killings, and military training aircraft can carry weapons whilst some are specifically designed for counter-insurgency operations.

The need to add other services. In addition to “brokering,” the ATT should include financial and transport services. These activities are not only essential to the actual transfers of conventional arms, but also leave a physical trace that may serve to verify the contents, their value, and the time of the transfers, beyond that which is declared by private or public entities. The authors of this article have reported extensively since 1999 in the importance and usefulness of monitoring these services for arms control purposes. The ATT should require states to register finance providers engaged in arms provision activities operating within their territory, as well as require licensing or authorization of each proposed finance provision activity. Also mandatory should be the registration of transport service providers engaged in arms transport operating within their territory, along with the notification of relevant authorities regarding each proposed transport service provision activity. Finally, transport service providers should be required to maintain comprehensive and verifiable documentation, including cargo manifests, airway bills, bills of lading and invoices, which at a minimum must contain details of the export authorization, the consignee/consignor, the end-user, and the relevant customs Tariff codes identifying each transported item.

The need for clear definitions of “export”, “import”, “transit”, “trans-shipment” and “transfers.” Strictly speaking, “export” or “import” are terms related to commercial activities and do not exhaust the definition of “international transfers.” The concept “international transfers” includes government-to-government deliveries and deliveries as the result of grants, gifts, loans, barter trade, excess arms programs, and so forth. As frequently pointed out by Amnesty International and others, all of these various types of “transfers” need to be included in the ATT. For instance, excluding government-to-government deliveries from the ATT would render a considerable amount of international arms transfers outside of the ATT’s jurisdiction. In 2010, the United States Government Accountability Office reported that nearly 41 percent of the international arms transfers by the U.S. were government-to-government deliveries. Moreover, the ATT does not properly address customs regulations relating to transit and trans-shipment, as it advocates measures that are either already universally in force or cannot be performed by the state in which a transit or trans-shipment occurs without revision of internationally accepted and regulated practices. An enhanced ATT should include a completely revised provision on transit and trans-shipment in order to include the addition of other customs practices that are relevant for arms trade control.

The need for enhanced transparency and reporting. Article 10 of the ATT text allows states the freedom to record and report their arms trade “according to their national laws.”

States may “exclude commercially sensitive or national security information.” The current proposal does not consider that the majority of states do not publish national reports on their arms exports and imports, and in several states the national regulations on transparency are minimal, include ineffective requirements, or are purposely weak, thereby reducing record-keeping to an exercise in creative administration. More often, verification mechanisms and law enforcement are under-funded or non-existent. If certain transfers are allowed to go unaccounted for under the guise of *commercially sensitive or national security information*, the ATT will provide an excuse for governments to hide information on the transfer of arms used in crimes, human rights violations and the excessive accumulation of conventional arms. Only a firm, robust, and mandatory framework for reporting can serve the purpose of a confidence-building ATT; vague, incomplete, unverifiable or “censored” information will not.

The need for a workable amendment process. Due to the monumental task of reaching an agreement among the 193 members of the United Nations, no international treaty can be complete or adequate from the beginning. Therefore amending the treaty should be made relatively easy to ensure that the treaty can be strengthened—for example, in its application to the fast evolution of conventional weapons technology. In article 20 of the treaty regarding amendments, the “consensus” requirement should be substituted with a “majority” or “qualified majority” requirement. In the “consensus” environment, it takes only one state to disagree with proposed changes to indefinitely delay a process of amendments considered necessary by a large majority of other states.

The need to include certain types of “internal transfers.” The ATT excludes “internal transfers”, i.e. *“movement of conventional arms by a State Party or its agents for its armed forces or law enforcement authorities operating outside its national territories, provided the conventional arms remain under the State Party’s ownership.”* The exclusion of these movements seems consistent with a treaty that regulates “international transfers”, i.e. transfers in which the ownership of the items changes nationality. However, if “internal” arms transfers to warehouses, depots, military bases, and units located in other countries are not reported and controlled, there will be a significant loopholes and distortion in the assessment of the military balance of a certain area or region. Several prominent arms-exporting countries are supposed to explicitly record equipment sent abroad for use by their troops as exports (or authorization to temporary or permanent exports). Internal transfers should be recorded at least for war-related material and peacekeeping operations. In fact, amazing quantities of armaments have already been abandoned by retreating troops during wars abroad, seized by non-state actors or diverted—because of negligence or corruption—to unauthorized users, from DR Congo to Ivory Coast, and Afghanistan to Iraq.

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